

Internal Revenue Service, Treasury

§ 20.2056A-7

Less: Tax that would have been imposed on <i>D</i> 's actual taxable estate of \$500,000		0	Section 2056A Estate Tax		\$235,000
--	--	---	--------------------------------	--	-----------

Example 2. (i) The facts are the same as in *Example 1*, except that *D*'s gross estate was \$2,000,000 and *D*'s estate paid \$70,000 in state death taxes to State X. *D*'s estate tax is computed as follows:

Gross Estate	\$2,000,000		
Marital Deduction	(700,000)		
Taxable Estate	\$1,300,000		
Gross Tax			\$469,800
Less: Unified Credit		192,800	
State Death Tax Credit Limitation (lesser of \$51,600 or \$70,000 tax paid)		51,600	(244,400)
Estate Tax			\$225,400

(ii) *S* dies in 1997 at which time *S* is still a resident of the United States and the value of the assets of the QDOT is \$800,000. *S*'s estate pays \$40,000 in State X death taxes with respect to the inclusion of the QDOT in *S*'s

gross estate for state death tax purposes. Assuming there were no taxable events during *S*'s lifetime with respect to the QDOT, the estate tax imposed under section 2056A(b)(1)(B) is \$304,800 computed as follows:

<i>D</i> 's Actual Taxable Estate	\$1,300,000	
QDOT Property	800,000	
Total	\$2,100,000	
Gross Tax		\$829,800
Less: Unified Credit		(192,800)
Pre-2011 section 2056A estate tax		\$637,000
(A) State Death Tax Credit Computation:		
(1) State death tax paid by <i>S</i> 's estate with respect to the QDOT [\$40,000] plus state death tax previously paid by <i>D</i> 's estate [\$70,000] = \$110,000.		
(2) Credit limit under section 2011(b) (based on <i>D</i> 's adjusted taxable estate of \$2,040,000 under sections 2056A(b)(2)(A) and 2011(b)) = \$106,800.		
(B) State death tax credit allowable against section 2056A estate tax (lesser of paragraph (ii)(A)(1) or (2) of this Example 2)		(106,800)
Net Tax		\$530,200
Less: Tax that would have been imposed on <i>D</i> 's taxable estate of \$1,300,000		225,400
Section 2056A Estate Tax		\$304,800

[T.D. 8612, 60 FR 43547, Aug. 22, 1995]

§ 20.2056A-7 Allowance of prior transfer credit under section 2013.

(a) *Property subject to QDOT election.* Section 2056(d)(3) provides special rules for computing the section 2013 credit allowed with respect to property sub-

ject to a QDOT election. In computing the credit under section 2013, the amount of the credit is determined under section 2013 and the regulations thereunder, except that—

(1) The first limitation as described in section 2013(b) and § 20.2013-2 is the

§ 20.2056A-8

26 CFR Ch. I (4-1-04 Edition)

amount of the estate tax imposed under section 2056A(b)(1)(A), with respect to distributions during the spouse's life, and under section 2056A(b)(1)(B), with respect to the value of the QDOT assets on the spouse's death;

(2) In computing the second limitation as described in section 2013(c) and § 20.2013-3, the value of the property transferred to the decedent (as defined in section 2013(d) and § 20.2013-4) is deemed to be the value of the QDOT assets on the date of death of the surviving spouse. The value as so determined is not reduced by the section 2056A estate tax imposed at the time of the spouse's death; and

(3) The amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

(b) *Property not subject to QDOT election.* If property includible in a decedent's gross estate passes to a noncitizen surviving spouse (the transferee) and no deduction is allowed to the decedent's estate for that interest in property under section 2056(a) solely because the requirements of section 2056(d)(2) are not satisfied, and the transferee spouse dies with an estate that is subject to tax under section 2001 or 2101, as the case may be, any credit for tax on prior transfers allowable to the estate of the transferee spouse under section 2013 with respect to such interest in property is determined in accordance with the rules of section 2013 and the regulations thereunder, except that the amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

(c) *Example.* The application of this section may be illustrated by the following example:

Example. The facts are the same as in § 20.2056A-6, *Example 2(ii)*. *D*, a United States citizen, dies in 1994, a resident of State X, with a gross estate of \$2,000,000. Under *D*'s will, a pecuniary bequest of \$700,000 passes to a QDOT for the benefit of *D*'s spouse *S*, who is a resident but not a citizen of the United States. *S* dies in 1997 at which time *S* is still a resident of the United States and the value of the assets of the QDOT is \$800,000. There were no taxable events during *S*'s lifetime. An estate tax of \$304,800 is imposed under section 2056A(b)(1)(B). *S*'s taxable estate, in-

cluding the value of the QDOT (\$800,000), is \$1,500,000.

(i) Under paragraph (a)(1) of this section, the first limitation for purposes of section 2013(b) is \$304,800, the amount of the section 2056A estate tax.

(ii) Under paragraph (a)(2) of this section, the second limitation for purposes of section 2013(c) is computed as follows:

(A) *S*'s net estate tax payable under § 20.2013-3(a)(1), as modified under paragraph (a)(2) of this section, is computed as follows:

Taxable estate		\$1,500,000
Gross estate tax		555,800
Less: Unified credit ...	\$192,800	
Credit for state death taxes	64,400	257,200
Pre-2013 net estate tax payable		\$298,600

(B) *S*'s net estate tax payable under § 20.2013-3(a)(2), as modified under paragraph (a)(2) of this section, is computed as follows:

Taxable estate		\$700,000
Gross estate tax		229,800
Less: Unified credit ...	\$192,800	
Credit for state death taxes	18,000	210,800
Net tax payable ...		\$19,000
(C) <i>Second Limitation:</i> Paragraph (ii)(A) of this <i>Example</i> Less: Paragraph (ii)(B) of this <i>Example</i>	\$298,600 19,000	 \$279,600

(iii) Credit for tax on prior transfers = \$279,600 (lesser of paragraphs (i) or (ii) of this *Example*).

[T.D. 8612, 60 FR 43549, Aug. 22, 1995]

§ 20.2056A-8 Special rules for joint property.

(a) *Inclusion in gross estate—(1) General rule.* If property is held by the decedent and the surviving spouse of the decedent as joint tenants with right of survivorship, or as tenants by the entirety, and the surviving spouse is not a United States citizen (or treated as a United States citizen) at the time of the decedent's death, the property is subject to inclusion in the decedent's gross estate in accordance with the rules of section 2040(a) (general rule for includibility of joint interests), and